

a negative test for Brucellosis within thirty (30) days prior to sale, disposal or movement, and must be accompanied by an official health certificate or record of such test, except:

“(1) Cattle from certified Brucellosis free herds and modified certified areas.

“(2) Cattle under twenty-four (24) months of age officially vaccinated with Brucella Abortus Vaccine and accompanied by an approved health certificate.

“(3) Steers and feeder heifers moving under special permit from State Veterinarian.

“(4) Adult vaccinated cattle moving into herds of like status under permit from State Veterinarian.

“(5) Cattle moving for exhibit or show according to Regulations of the Indiana State Livestock Sanitary Board.

“(6) Cattle destined for immediate slaughter.”

It is therefore my opinion the farmer selling his personal livestock at auction on his own premises need not comply with Sections 16-2104 and 16-2105. This does not mean, however, that the farmer may disregard the rules and regulations established by the Indiana Live Stock Board.

OFFICIAL OPINION NO. 7

January 18, 1952.

Hon. Otto K. Jensen, State Examiner
State Board of Accounts
304 State House
Indianapolis, Indiana

Dear Mr. Jensen:

I have your request for an official opinion in which you ask a number of questions. You state:

“We have been considerably confused by the provisions of Chapter 253, Acts of 1951 and the method

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being followed in the handling of maintenance charges under this act. We would appreciate your clarification of certain of these points:"

Your first question is:

"(1) What receipts are to be placed in the mental institutions personal service fund? We have in mind that there are two classes of receipts; one, maintenance receipts received in whole or in part from the guardian or family of the inmate, and the other type being the receipts paid out of township poor relief funds for maintenance charges in whole or in part which payments are restricted to a period of twelve months after admission."

Chapter 253 of the Acts of 1951 amends the title of Chapter 132 of the Acts of 1935 and amends Section 1 of Chapter 44 of the Acts of 1943 which, in turn, had amended Section 1 of the 1935 Act. Thus, although Chapter 253 creates new responsibilities, provides a new method of collection and provides a new distribution of funds collected, it is an amendatory act which becomes a portion of the 1935 Act as otherwise previously amended. A portion of Section 2 of Chapter 253 reads as follows:

"Whenever any money shall have been paid out of the township poor relief fund of any township for the maintenance expense for any indigent person as provided in this act, such fund shall be reimbursed for such payment from any money which may be recovered from the income or estate of any such indigent person, the relatives of such person or any other persons.

"The treasurer of the State of Indiana shall collect all amounts due under this act and all monies collected under this act shall be deposited with the state treasurer, *except any money which may be recovered from the income or estate of any such indigent person, the relatives of such person or from any other persons*, and shall be deposited into a fund to be known as the Mental Institutions Personal Service Funds, which fund shall

be used for additional compensation for the employees of the state mental institutions and the same is hereby appropriated for such purposes."

I have quoted the first of these two paragraphs to allow a comparison of the wording in the exceptions in the second paragraph with the provision contained in the first paragraph.

The general plan established by this act is the collection of maintenance from the estate of the patient or, if the patient has no estate sufficient to provide maintenance, collection from certain enumerated relatives if they are able to pay. If neither the patient nor the enumerated relatives are determined to be able to pay then the township trustee pays the maintenance for the first year the patient is confined to one of the applicable benevolent institutions. The first above quoted paragraph provides for reimbursement of funds paid by the township trustee if later recovery is made from the estate of the patient or from his relatives. From its context it is clear that the exemption contained in the second paragraph carries out this principle by providing that funds which are to be used in reimbursing a township trustee shall not be covered into the Mental Institutions Personal Service Fund.

Therefore, in answer to your first question, it is my opinion that all funds, whether from the patient, his relatives or from township trustees should go into the Mental Institutions Personal Service Fund unless they are funds to be used in the reimbursement of township trustees.

Your second question reads as follows :

"(2) If maintenance charges were received after March 5, 1951 covering a period prior to that date, into what fund should the remittance be receipted?"

It is to be noted, as pointed out in my answer to your first question, that this is not a new act but merely an amendment to an earlier act. It has been uniformly held in Indiana that an amendment to an act takes the place of the portion of the act amended and is to be considered as having been a part of the original act as originally adopted except as it affects rights that accrue or occurrences prior to the actual date of the amendment. *Hamilton County Council v. State ex rel. Groff*

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(1949) 227 Ind. 608, 87 N. E. 810; Million v. Metropolitan Casualty Ins. Co. (1932), 95 Ind. App. 628, 172 N. E. 569; Concrete Steel Co. v. Metropolitan Casualty Ins. Co. of New York (1932), 95 Ind. App. 649, 173 N. E. 651.

Thus Chapter 253 does not affect the amounts owed for periods prior to March 5, 1951, however, when in the portion of Section 2 quoted previously it refers to all monies collected under this act the rules of construction require that the term "this act" refers to the 1935 Act, as amended, and since no rights have accrued to have the funds collected, used or deposited in any particular fund or funds, funds collected subsequent to March 5, 1951, although accruing under earlier amendments of the 1935 Act, will be disposed of as provided in Chapter 253. Thus, in answer to your second question, maintenance charges received after March 5, 1951, covering a prior period, should be placed in the Mental Institutions Personal Service Funds.

Your third question reads as follows:

"(3) If maintenance charges were paid prior to March 5, 1951 and subsequently the maintenance charge increased, is the total contribution to be credited to the mental institution's personal service fund or should the amount of the increased contribution be credited to that fund and the amount of the original contribution continue to be credited to the state general fund?"

The answers to the first and second questions are conclusive as to the answer to this question. All such funds should be placed in the Mental Institutions Personal Service Fund.

Your fourth question reads as follows:

"(4) Are township trustees required to investigate the patient's or his family's ability to pay maintenance cost? If so, by what method is the trustee notified and is the investigation to be made prior to or after commitment?"

Section 2 of Chapter 253, same being Burns' 1951 Supplement, provides in part as follows:

"In all future commitments to mental institutions where the township trustee of the township of a person's legal residence finds the person to be a wholly indigent resident of the township and when the maintenance fee of ten dollars (\$10) a week is not contributed from his estate or by his relatives as provided in this act (§§ 22-401, 22-403, 22-404), he shall report such facts to the court having jurisdiction of commitments of mental patients and if such court shall find from said report that said person is an indigent, he shall issue an order declaring such person to be an indigent, and any expense of such indigent person's maintenance not exceeding ten dollars (\$10) a week for a period of not to exceed one (1) year shall be a charge upon the township poor relief fund of the township of his legal residence.

"If it is found by the said township trustee that the person is only partly indigent he shall report such fact to the court having jurisdiction of commitments of mental patients, and if such court shall find from said report that said person is only partly indigent and that a portion of the maintenance fee of ten dollars (\$10) per week is paid from the estate of such person or by his relatives or any other persons, he shall issue an order declaring such person to be partly indigent, and any part of said sum of ten dollars (\$10) per week not paid from such estate or by relatives or other person for such persons, there shall be a charge upon the township poor relief fund of the township of his legal residence."

The above quoted portion of Section 2 clearly requires the township trustee to make investigations. It does not affirmatively provide for any particular method of notifying the township trustee nor does it provide a specific time by which the trustee must have completed his investigation. However, the quoted paragraphs begin *"In all future commitments."* From the use of this phrase and from the context generally it is clear that the legislature intended and expected the adjudication provided to be made by the court on the basis of the township trustee's report to be a part of the commitment procedure. It would, therefore, seem an aid to orderly pro-

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cedure if the township trustee was notified when proceedings were instituted to have a person's sanity determined and if his report could be made on or before the time of formal commitment by the court.

Your fifth question reads as follows:

“(5) Who determines whether a patient is wholly or partially indigent and if there is a finding of indigency in whole or in part, to what officers or persons is the order to be directed?”

The paragraphs from Section 2 quoted in my answer to your question number four include the following phrases:

“* * * he shall report such facts to the court having jurisdiction of commitments of mental patients and if such court shall find from said report that said person is an indigent, *he shall issue an order declaring such person to be an indigent* * * *.

“* * * and if such court shall find from said report that said person is only partly indigent and that a portion of the maintenance fee of ten dollars (\$10) per week is paid from the estate of such person or by his relatives or any other persons, he shall issue an order declaring such person to be partly indigent, * * *.”

From the above quoted excerpts it is clear that it is the judge who determines whether a patient is wholly or partially indigent and the judge is required to make an order determining whether or not the patient is wholly or partially indigent. Such order is not required to be addressed to anyone but is rather a determination or adjudication of an issue before the court.

Inasmuch as the statute makes it the affirmative duty in the case of indigency for the township trustee to pay the maintenance charge for the first year and, in case of a determination of partial indigency, it is the duty of the township trustee to pay ten dollars a week except insofar as a portion of that amount is actually paid by some other person. A determination of indigency amounts to and is effective as an order on the township trustee to pay ten dollars a week or, more exactly,

an order on the county auditor to pay out of the respective township Poor Relief Funds, and a determination of partial indigency has a similar effectiveness except as limited by payments actually made by other persons. However a determination of non-indigency or partial indigency is not similarly binding on the relatives.

Your question number six reads as follows:

“(6) In the case of partial indigency, is the order to pay to be directed to both the township trustee and the guardian or responsible person of the family of the inmate?”

This question is answered by the answer to question number five.

Your question number seven reads as follows:

“(7) Should the amount of the contribution from each source and the duration of the payments be included in the order?”

This question is answered by the answer to question number five.

Your question number eight reads as follows:

“(8) If the family estate or income of a partially indigent inmate failed to pay their portion of maintenance cost, is the township poor relief fund liable for the full amount of the \$10.00 per week for a period of one year or only for the amount which they have been ordered to pay?”

A portion of Section 2 of Chapter 253 reads as follows:

“* * * and if such court shall find from said report that said person is only partly indigent and that a portion of the maintenance fee of ten dollars (\$10) per week is paid from the estate of such person or by his relatives or any other persons, he shall issue an order declaring such person to be partly indigent, and any part of said sum of ten dollars (\$10) per week not paid from such estate or by relatives or other person for such

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persons, there shall be a charge upon the township poor relief fund of the township of his legal residence."

From this last quoted passage it is clear, as was pointed out in the answer to question number five, that no determination of the respective responsibilities is required to be made but that the trustee is responsible for the payment of ten dollars per week in case of partial indigency, except for any sums actually paid by the patient, his estate or his relatives.

Thus the township trustee is not required to pay any specific amount to be ordered by the court but it is required to pay any amount not actually paid by other persons.

Your question number nine reads as follows:

"(9) Are superintendents of mental institutions required to prepare statements of inmate's accounts pursuant to the order of the court to be delivered to the proper officer charged with preparing billings, making collections and accounting for such collections?"

A portion of Section 2 of Chapter 253 of the Acts of 1951 reads as follows:

"The account for the maintenance of such person at not exceeding ten dollars (\$10) per week shall be signed by the superintendent, and attested by the seal of the institution, and shall be delivered to the treasurer of the state.

"All such claims for payment shall be presented to the auditor of the county of the residence of such person, and shall be paid by the county auditor out of the respective township poor relief funds. Before paying such claims the same shall be approved by the township trustee of such townships as the overseer of the poor."

From the last quoted portion of the section it is clear that a statement of account is to be furnished by the superintendents of the various institutions to the appropriate county auditors.

Your question number ten reads as follows:

"(10) What officer is required to bill, collect and account for inmate maintenance? Is such officer re-

quired to keep an account for each inmate or should such accounts be maintained in the office of the institution?"

A portion of Section 2 of Chapter 253 reads as follows:

"The treasurer of the state of Indiana shall collect all amounts due under this act and all monies collected under this act shall be deposited with the state treasurer except any money which may be recovered from the trusts or estate of any such indigent person, the relatives of such person or from any other persons, and shall be deposited into a fund to be known as the mental institutions personal service funds, which fund shall be due for additional compensation for the employees of the state mental institutions and the same is hereby appropriated for such purposes."

The above quoted excerpt requires the Treasurer of State to collect all monies. The portion of the section quoted in answer to your question number nine requires the superintendents of the respective institutions to make certain billings. Other portions of the statute authorize the Indiana Council for Mental Health, together with the Attorney General, to make certain compromises.

Therefore, in answer to your question pursuant to Chapter 253, generally it is the duty of the superintendent of the hospital to bill the responsible officer or person. It is the responsibility of the Treasurer of State to receive all funds and place them in the appropriate accounts, and it is the duty of the Indiana Council for Mental Health and the Attorney General to take necessary actions to require payment.